

**LEASE IN FURTHERANCE OF CONVEYANCE
BETWEEN
THE UNITED STATES OF AMERICA
AND
[SUCCESSFUL BIDDER]
FOR PORTIONS OF THE
FORMER MARINE CORPS AIR STATION TUSTIN**

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LIST OF EXHIBITS

- A. Government Parcels
- B. Leased Premises
- C. Work Exempt from Government Consent
- D. Location of Monitoring Wells
- E. Lease Restriction Revision Form

1 **LEASE IN FURTHERANCE OF CONVEYANCE**
2 **BETWEEN**
3 **THE UNITED STATES OF AMERICA**
4 **AND [SUCCESSFUL BIDDER]**
5 **THE CITY OF TUSTIN, CALIFORNIA**
6 **FOR PORTIONS OF**
7 **FORMER MARINE CORPS AIR STATION TUSTIN**
8

9 **THIS LEASE** is made this _____ day of _____, 2003, by and between the
10 **UNITED STATES OF AMERICA**, acting by and through the Department of the Navy
11 **(Government)**, and _____ **(Lessee)**, purchaser of certain real property at the former
12 Marine Corps Air Station, Tustin, Tustin California (the Installation).
13

14 **RECITALS**
15
16

17 A. The Government has closed the former Marine Corps Air Station Tustin (MCAS
18 Tustin) pursuant to the Defense Base Closure and Realignment Act of 1990, Pub.L. 101-510), as
19 amended (10 U.S.C. § 2687 note) (hereinafter referred to as DBCRA) and is selling portions of
20 that property through a public sale, said portions identified in Exhibit A hereto and hereinafter
21 referred to as the "Sale Property".
22

23 B. Lessee has purchased a portion of the Sale Property, known as Parcels 23 and 24,
24 or the Tustin Villas, pursuant to Invitation for Bids No. 9PR-2002-156\157\158 (IFB).
25 Government is in the process of remediating four Environmental Restoration Program sites
26 within Parcel 24 as follows: 1) Underground Storage Tank Site (UST)-268, 2) Installation
27 Restoration Program Site (IRP)-13S, 3) IRP-13W, and 4) IRP-16. Pursuant to said IFB, title to
28 said sites will not convey until site closure is attained and the Government issues a Finding of
29 Suitability to Transfer (FOST) addressing each site.
30

31 C. As consideration for the purchase of Parcels 23 and 24, Government will allow
32 Lessee limited access and use of the Environmental Restoration Program sites, hereinafter
33 referred to as the Leased Premises, and identified at Exhibit B, in accordance with the terms and
34 conditions of this Lease until Government issues a FOST addressing the Leased Premises and
35 title has transferred.
36

37 D. Pending final disposition, 10 U.S.C. § 2667(f) authorizes the Government to lease
38 real property located at a military installation closed under DBCRA.
39

40 E. In accordance with the National Environmental Policy Act (NEPA) of 1969, as
41 amended, and the California Environmental Quality Act (CEQA), the Government and the City
42 of Tustin (City) prepared a Joint Final Environmental Impact Statement/Environmental Impact
43 Report (EIS/EIR) for the disposal and reuse of the former MCAS Tustin. The City certified the
44 EIS/EIR as complete under CEQA on January 17, 2001. A NEPA Record of Decision regarding
45 the disposal of MCAS Tustin was issued on March 2, 2001.

1
2 F. An Environmental Baseline Survey (EBS) has been prepared for MCAS Tustin as
3 well as a Finding of Suitability to Lease (FOSL) in accordance with 10 U.S.C. § 2667(f)(3), and
4 Department of Defense policy guidelines. The "Finding of Suitability to Lease for Carve-Out
5 Areas 5, 6, 7, 8, 9, 10, and 11, Marine Corps Air Station Tustin, Tustin, California" dated April
6 26, 2002, concludes that activities allowed under this Lease, if conducted in accordance with the
7 restrictions contained therein, are consistent with protection of human health and the
8 environment. Cognizant state and federal regulatory agencies have concurred on the FOSL.
9

10 G. The Government has agreed to grant a lease in furtherance of and pending
11 conveyance by deed for Leased Premises to the Lessee and the Lessee has agreed to enter into
12 this Lease.
13
14

15 **MUTUAL UNDERSTANDINGS**

16

17 **NOW, THEREFORE**, in consideration of the terms, covenants, and conditions
18 hereinafter set forth, Government and Lessee hereby agree as follows:
19

20 **1. LEASED PREMISES:**

21

22 Government does hereby lease, and demise to Lessee in furtherance of and pending
23 conveyance, and Lessee does hereby hire from Government, the Leased Premises, together with
24 all improvements and all personal property thereon together with right of ingress and egress to
25 said Leased Premises.
26
27

28 **2. TERM:**

29

30 2.1. The Lessee shall accept conveyance of a portion of the Leased Premises (each
31 such portion hereinafter referred to as Conveyed Portion) within ten (10) calendar days
32 following the tender of a Quitclaim Deed by the Government upon the execution of the FOST.
33 The term of this Lease shall be for the earlier of: (A) a period of fifty (50) years beginning on the
34 date of execution of this Lease and ending on the ____ day of _____, 2053; or (B) the effective
35 date of conveyance by Quitclaim Deed of a Conveyed Portion, unless sooner terminated in
36 accordance with the provisions of Article 14.
37

38 2.2. This Lease shall automatically terminate upon conveyance by Quitclaim Deed
39 with respect to the applicable Conveyed Portion as if such date were the stated expiration date
40 contained herein and neither party hereto shall have any further obligation under this Lease with
41 respect to the Conveyed Portion (other than any obligations which otherwise would survive
42 termination of this Lease). All references to the Leased Premises shall be deemed to exclude
43 such Conveyed Portions and this Lease shall continue in full force and effect with respect to the
44 remainder of the Leased Premises.
45

46 **3. CONSIDERATION:**

As consideration for this Lease, Lessee agrees to provide protection and maintenance to the extent described in Article 12.

4. USE OF LEASED PREMISES:

4.1 The sole purpose for which Leased Premises may be used, in the absence of prior written approval by Government for any other use, is for uses consistent with the MCAS Tustin Base Reuse Plan/Specific Plan subject to terms and conditions of this lease.

4.2 No known historic or archeological sites exist on the Leased Premises. Should such materials be encountered, Lessee shall stop work immediately and notify Government.

5. SUBLETTING:

5.1 Lessee may sublease Leased Premises without prior approval of Government, provided the sublease incorporates the terms of the Lease and does not include any provisions that are inconsistent with this Lease. Any proposed sublease, which involves the use of hazardous or toxic materials, including those of an explosive, flammable, or pyrotechnic nature, as provided in 10 U.S.C. § 2692, shall require prior Government approval. Such consent shall not be unreasonably withheld or delayed. Government will make every reasonable effort to make a determination under 10 U.S.C. § 2692 within thirty (30) calendar days of the date it receives Lessee's request for Government's approval. Under no circumstance shall Lessee assign this Lease.

5.2 For purposes of Article 5 and this Lease, "sublease" shall include licenses, use and occupancy agreements, concession agreements and other similar agreements.

5.3 Any sublease granted by Lessee shall contain a copy of this Lease as an attachment and be subject to all terms and conditions of this Lease and shall terminate immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of Government to Lessee or any sublessee. Under any sublease made, with or without consent, the sublessee shall be deemed to have assumed all of the obligations of Lessee under this Lease. No sublease shall relieve Lessee of any of its obligations hereunder.

5.4 Upon its execution, a copy of the sublease shall immediately be furnished to Government. Should conflict arise between the provisions of this Lease and a provision of the sublease, the provisions of this Lease shall take precedence. Any sublease shall not be taken or construed to diminish or enlarge any of the rights or obligations of either of the parties under this Lease.

6. CONDITION OF PROPERTY:

6.1 Leased Premises shall be delivered to Lessee "AS IS", "WHERE IS." Government makes no warranty as to Leased Premises' usability generally or as to its fitness for

1 any particular purpose. Any safety and/or health hazards identified shall be corrected, at
2 Lessee's or sublessee's expense, prior to use and occupancy.

3
4 6.2 In the event this Lease is terminated pursuant to Article 14, Lessee is not
5 obligated to restore improvements to the Leased Premises once those improvements have been
6 demolished or to demolish improvements that have been completed during the term of this
7 Lease.

8
9 **7. ENVIRONMENTAL BASELINE SURVEY AND FINDING OF SUITABILITY TO**
10 **LEASE:**

11
12 Copies of the EBS, FOSL, and all other documents referenced therein have been made
13 available to Lessee. The FOSL sets forth the basis for Government's determination that Leased
14 Premises are suitable for leasing and the EBS describes the environmental condition of
15 Installation. Lessee is hereby made aware of the notifications contained in the FOSL and shall
16 comply with the restrictions set forth therein.

17
18 **8. ALTERATIONS:**

19
20 8.1 Lessee shall not construct, demolish or make or permit its sublessees to construct,
21 demolish or make any substantial alterations, additions, excavations, or improvements to the
22 Leased Premises (collectively Work), including those which may adversely affect the cleanup,
23 human health or the environment, without the prior written consent of Government. No prior
24 written consent shall be required for Work described in Exhibit C.

25
26 8.2 Lessee shall provide Government with prior written notification and a full
27 description of all proposed Work on Leased Premises (other than work described in Exhibit C), a
28 projected schedule and cost thereof, and an analysis as to how and why such Work will or will
29 not adversely affect the environmental cleanup of Leased Premises, human health or the
30 environment.

31
32 **9. ACCESS BY GOVERNMENT:**

33
34 In addition to access required under Article 13, at all reasonable times throughout the
35 term of this Lease, Government shall be allowed access to Leased Premises for any purposes
36 upon notice to Lessee. Government normally will give Lessee or any sublessee forty-eight (48)
37 hour prior notice of its intention to enter Leased Premises, unless it determines the entry is
38 required for safety, environmental, operations or security purposes. Lessee shall have no claim
39 on account of any entries against Government or any officer, agent, employee, contractor or
40 subcontractor of Government. All keys to the buildings and facilities occupied by Lessee or any
41 sublessee shall be made available to Government upon request. Any access by Government will
42 take into consideration its obligations under Article 34.

43
44 **10. UTILITIES AND SERVICES:**
45

1 10.1 Procurement of utilities, i.e., electricity, water, gas, steam, sewer, telephone and
2 trash removal shall be the sole responsibility of Lessee.

3
4 10.2 Should utility services be required by Government in connection with
5 environmental contracts, or other Government requirements within Leased Premises, the Lessee
6 shall, to the maximum extent practicable, work with utility service providers, other owners, and
7 prospective owners to facilitate the provision of water, electrical, and sewerage services to
8 property retained by Government. If such services are provided by Lessee, Government shall
9 reimburse Lessee at a rate equitably related to the cost incurred by Lessee in providing such
10 services or utilities, or the costs incurred by Lessee where the Lessee purchases such services or
11 utilities from a third party provider.

12
13 **11. NON-INTERFERENCE WITH GOVERNMENT OPERATIONS:**

14
15 Lessee shall not interfere with or otherwise restrict environmental clean-up or restoration
16 actions by Government, United States Environmental Protection Agency (EPA), state
17 environmental regulators, or their contractors. Environmental clean-up, restoration or testing
18 activities by these parties shall take priority over Lessee's use of Leased Premises in the event of
19 any conflict. Notwithstanding that priority, the Government shall make every reasonable effort
20 to work with the Lessee, to provide reasonable and timely notification of all Government
21 operations that may interfere with Lessee and sublessees' operations and to minimize potential
22 conflicts between necessary remediation of environmental contamination and Lessee's and
23 sublessees' use of Leased Premises.

24
25 **12. PROTECTION AND MAINTENANCE SERVICES:**

26
27 12.1 Government shall not be required to furnish any services or facilities to Lessee or
28 to make any repair or alteration in or to Leased Premises. Lessee hereby assumes the full and
29 sole responsibility for the protection, maintenance and repair of Leased Premises upon such
30 standards that Lessee determines appropriate and reasonable.

31
32 12.2 During the term of this Lease, debris, trash and other materials not generated by
33 Government shall be promptly removed from Leased Premises.

34
35 12.3 Lessee shall provide or cause to be provided all security services necessary to
36 assure security and safety within Leased Premises. Any crimes or other offenses, including
37 traffic offenses and crimes and offenses involving damage to or theft of Government property,
38 shall be reported to the appropriate authorities for their investigation and disposition and to
39 Government as property owner.

40
41 12.4 Lessee shall take or cause to be taken, all reasonable fire protection precautions at
42 Leased Premises consistent with the level of use on the property.

43
44 **13. ENVIRONMENTAL PROTECTION PROVISIONS:**

1 13.1 Lessee, sublessees and contractors shall comply with all applicable federal, state
2 and local laws, regulations and standards that are or may become applicable to Lessee's
3 activities on Leased Premises.
4

5 13.2 Lessee or any sublessee shall be solely responsible for obtaining at its cost and
6 expense any environmental permits required for its operations under the Lease, independent of
7 any existing permits held by Government. Lessee shall provide prior written notice to the
8 Government of any environmental permit applications required for any of Lessee's or
9 sublessee's operations which the Lessee or any sublessee proposes to submit to a regulatory
10 agency. Lessee acknowledges that Government will not consent to being named a secondary
11 discharger or co-permittee for any operations or activities of the Lessee or any sublessee under
12 the Lease. In the event Government is named as a secondary discharger or co-permittee for any
13 activity or operation of the Lessee or any sublessee, Government shall have the right to take
14 reasonable actions necessary to prevent, suspend, or terminate such activity or operation,
15 including terminating this Lease, without liability or penalty.
16

17 13.3 Government's rights under this Lease specifically include the right for
18 Government officials to inspect upon reasonable notice Leased Premises for compliance with
19 environmental, safety and occupational health laws and regulations, whether or not Government
20 is responsible for enforcing them. Such inspections are without prejudice to the right of duly
21 constituted enforcement officials to make such inspections. Government normally will give
22 Lessee or sublessee forty-eight (48) hours prior notice of its intention to enter Leased Premises
23 unless it determines the entry is required for safety, environmental, operations or security
24 purposes. Lessee shall have no claim on account of any entries against the United States or any
25 officer, agent, employee, contractor or subcontractor thereof.
26

27 13.4 Government, pursuant to the Comprehensive Environmental Response
28 Compensation and Liability Act (CERCLA) of 1980 as amended, and the California
29 Environmental Protection Agency, Department of Toxic Substances Control (DTSC) pursuant to
30 the Resource Conservation and Recovery Act (RCRA), have entered into a Federal Facility Site
31 Remediation Agreement (FFSRA) for MCAS Tustin. Lessee acknowledges that Government
32 has made available a copy of the FFSRA and agrees that should any conflict arise between the
33 terms of the FFSRA as it presently exists or may be amended and the provisions of this Lease,
34 the terms of the FFSRA will take precedence. Lessee further agrees that notwithstanding any
35 other provision of this Lease, Government assumes no liability to Lessee or its sublessees should
36 implementation of the FFSRA interfere with Lessee's or any sublessee's use of Leased Premises.
37 The Government assumes no liability to repair, restore or replace the Leased Premises or any
38 part thereof, including any structures, roads, utilities or other improvements located on the
39 Leased Premises or necessary for use of the Leased Premises. Lessee shall have no claim on
40 account of any such interference against the United States or officer, agent, employee, contractor
41 or subcontractor thereof.
42

43 13.5 Government, EPA, DTSC, and the state, its officers, agents, employees,
44 contractors and subcontractors, have the right, upon reasonable notice to Lessee and/or any
45 subleases, to enter upon Leased Premises for the purposes enumerated in this Article and for

1 such other purposes consistent with any provisions of the Government's cleanup program
2 (including but not limited to CERCLA, IRP, or FFSRA):
3

4 13.5.1 to conduct investigations and surveys, including, where necessary,
5 drilling, soil and water sampling, test-pitting, testing soil borings and other activities
6 related to the cleanup program;
7

8 13.5.2 to inspect field activities of Government and its contractors and
9 subcontractors in implementing the cleanup program;
10

11 13.5.3 to conduct any test or survey required by EPA, or DTSC relating to the
12 implementation of the cleanup program;
13

14 13.5.4 to construct, operate, maintain or undertake any other response or
15 remedial action as required or necessary under the cleanup program, including but not
16 limited to monitoring wells, pumping wells and treatment facilities.
17

18 13.6 The following describes the conditions at the four Environmental Restoration
19 Program sites and the anticipated activities to be undertaken by the Government to complete
20 their cleanup. Other activities may be required as cleanup proceeds as set forth in Paragraph
21 13.5. All activities will be coordinated with the Lessee to the maximum extent practical to
22 minimize impacts to the Lessee's activities.
23

24 13.6.1 IRP-13S is a former vehicle maintenance area containing approximately
25 3.2 acres that includes Building 16, and a former wash pad. Two Areas of Concern are
26 associated with this site: ST-72 and MWA-18. Soil and groundwater contamination has
27 been identified, and the contaminants of concern are 1,2,3-trichloropropane and
28 trichloroethene (TCE).
29

30 13.6.1.1 Two areas within IRP-13S have been identified for soil removal.
31 These areas are located south of Building 16 and require excavation to below 10 feet
32 of soil impacted by TCE detected in previous investigations. Based on the current
33 schedule, this work is anticipated to occur by 2006.
34

35 13.6.1.2 A removal action has been implemented to actively pump and treat
36 groundwater. Further evaluation for additional groundwater treatment is ongoing.
37 Additional treatment system wells and associated piping may be installed on the
38 leased Premises. Active treatment of groundwater at IRP-13S that affects the Leased
39 Premises is anticipated to extend to approximately 2035. However, transfer of the
40 property can occur after the Government demonstrates that the remedy is in place
41 and operating properly and successfully, along with restrictions to allow for the
42 Government's ongoing treatment of the groundwater. Transfer of the property is
43 currently scheduled for 2008.
44

45 13.6.2 IRP-13W is a former drum storage area containing approximately 1.5
46 acres near Building 16. In 1997 approximately 4,000 tons of soil was removed that was

1 impacted by polyaromatic hydrocarbons, petroleum, polychlorinated biphenyls (PCBs),
2 and lead. Based on this work, the Government is currently pursuing closure for soils at
3 IRP-13W. However, regulatory approval has not been obtained, and additional work
4 may be necessary.
5

6 13.6.2.1 Groundwater evaluation at IRP-13W is ongoing. TCE has been
7 detected in some areas. The Government will be conducting additional sampling and
8 analysis to determine if any further action is required. Active treatment or long-term
9 monitoring may be required and if necessary, could extend to approximately 2035.
10 However, transfer of the property can occur after the Government demonstrates that
11 the remedy is in place and operating properly and successfully, along with
12 restrictions to allow for the Government's ongoing treatment of the groundwater.
13 Transfer of the property is currently scheduled to occur in 2008.
14

15 13.6.3 IRP-16 is a former fuel storage area containing approximately 1.7 acres
16 that consisted of various storage tanks. Current cleanup activities are focused on volatile
17 organic compounds (VOCs) identified in groundwater at a portion of the site called IRP-
18 16B. The Government has obtained closure of the other areas of IRP-16. Approximately
19 6,000 tons of soil was excavated from IRP-16B in 1996 to remove VOCs. The Santa Ana
20 RWQCB concurred with site closure for soil in 1997.
21

22 13.6.3.1 Groundwater evaluation at IRP-16 was conducted from 1995 to
23 2001. The Government proposed site closure in 2002 and regulatory agencies
24 informally concurred. The Government is currently preparing documentation to
25 formally close the site. Transfer of the property is currently scheduled to occur in
26 2004.
27

28 13.6.4 UST-268 and UST-18A/B are former underground storage (UST) sites
29 containing approximately 2.1 acres. UST-268 was a 4,500-gallon fiberglass tank
30 installed in 1984. A leak was reported in 1996 and the tank was removed in 1998.
31 During the cleanup in 1999 approximately 17,000 tons of soil was removed. UST-18A/B
32 was two 1,000-gallon steel tanks installed in 1943. Both tanks were removed in 1991,
33 and no leaks were detected. However, UST-18A/B remains open pending closure of
34 UST-268.
35

36 13.6.4.1 Soil and groundwater evaluation of post-remediation data at UST-
37 268 is ongoing. Additional sampling may be necessary at any of these sites. Active
38 treatment or long-term monitoring may be required and if necessary, could extend to
39 approximately 2035. However, transfer of the property can occur after the
40 Government demonstrates that the remedy is in place, along with restrictions to
41 allow for the Government's ongoing treatment of the groundwater. Transfer of this
42 property is currently scheduled to occur in 2005.
43

44 13.7 Lessee shall comply with the provisions of any health or safety plan in effect
45 under the IRP or the FFSRA during the course of any of the above described response or
46 remedial actions. Any inspection, survey, investigation or other response or remedial action

1 will, to the extent practicable, be coordinated with representatives designated by Lessee and any
2 sublessee. Lessee and sublessee shall have no claim on account of such entries against the
3 United States or any officer, agent, employee, contractor or subcontractor thereof. In addition,
4 Lessee shall comply with all applicable federal, state and local occupational safety and health
5 regulations.
6

7 13.8 In the event of any sublease of Leased Premises, Lessee shall provide to EPA and
8 California EPA, DTSC by certified mail at the address shown below, a copy of the agreement or
9 sublease of Leased Premises (as the case may be) within fourteen (14) calendar days after the
10 effective date of such transaction. Lessee may delete the financial terms and any other
11 proprietary information from the copy of any agreement of sublease furnished pursuant to this
12 condition.
13

14 Jennifer Rich, Remedial Project Manager, California EPA, DTSC
15 Office of Military Affairs
16 5796 Corporate Avenue
17 Cypress, CA 90630
18 James Ricks, Project Manager
19 US EPA, (SFD-H-8), Region IX
20 75 Hawthorne Street
21 San Francisco, CA 94105
22

23 13.9 Lessee shall strictly comply with the hazardous waste permit requirements under
24 RCRA and its applicable state equivalent. Except as specifically authorized by Government in
25 writing, Lessee must provide at its own expense such hazardous waste management facilities
26 complying with all laws and regulations. Government hazardous waste management facilities
27 will not be available to Lessee. Government EPA identification numbers shall not be used by
28 Lessee. Any violation of the requirements of this condition shall be deemed a material breach of
29 this Lease.
30

31 13.10 The Government's accumulation points for hazardous and other waste will not be
32 used by Lessee or any sublessee. Lessee or sublessee shall not permit its hazardous wastes to be
33 commingled with Government's hazardous waste.
34

35 13.11 Prior to commencement of operations on Leased Premises, Lessee shall have a
36 Government-approved plan for responding to hazardous substances, fuel and other chemical
37 spills caused by the Lessee or its sublessees. The contingency plan shall be consistent with the
38 provisions of California Code of Regulations, Title 22, Chapter 15, Article 4 beginning with
39 Section 66265.50. Such plan shall be independent of the Government's plan and, except for
40 initial fire response or spill containment, shall not rely on use of Government personnel or
41 equipment. Should Government provide any personnel or equipment whether for initial fire
42 response and/or spill containment, or otherwise on request of Lessee, or because Lessee was not,
43 in the opinion of Government, conducting timely cleanup actions, Lessee agrees to reimburse
44 Government for its costs in association with such response or cleanup.
45

1 13.12 Lessee shall not conduct or permit its sublessees to conduct any subsurface
2 excavation, digging, drilling or other disturbance of the surface without the prior written
3 approval of Government. Government shall make every effort to make a decision within 30
4 calendar days of the date it receives Lessee's request for approval. The parties recognize that the
5 Lessee or its sublessees may desire to conduct, at their own expense, certain investigations at the
6 Leased Premises to evaluate environmental conditions. Lessee shall provide Government with a
7 work plan for the performance of any environmental subsurface excavation, digging, drilling, or
8 other disturbance of the surface for review and approval at least 30 calendar days prior to
9 commencing any such work on the Leased Premises. The Government's review and approval
10 shall be limited to the health and safety plans, consistency with the FOSL, and ensuring, to the
11 maximum extent practicable, that the investigations do not cause or aggravate releases of
12 hazardous substances at the Leased Premises. Government reserves the right to impose
13 reasonable conditions on its approval.

14
15 13.13 The presence of known asbestos containing material (ACM), lead base paint
16 (LBP) or PCBs is identified in the FOSL.

17
18 13.13.1 If Lessee intends to make any improvements or repairs that require the
19 disturbance of or the removal of asbestos or ACM, an appropriate asbestos disposal plan
20 must be incorporated into the plans and specifications required under Article 8 and
21 submitted to Government. The asbestos disposal plan will identify the proposed disposal
22 site for the asbestos, or in the event the site has not been identified, will provide for
23 disposal at a licensed facility authorized to receive asbestos and ACM. If the Lessee
24 intends to make any improvements or repairs that require the removal of lead based paint
25 (LBP) or PCBs, prior written approval must be obtained from Government. Lessee shall
26 manage the asbestos and ACM, LBP and PCBs in accordance with federal, state and
27 local laws.

28
29 13.13.2 Lessee shall be responsible for monitoring the condition of existing
30 asbestos and ACM on Leased Premises for deterioration or damage and accomplishing
31 repairs or abatement pursuant to the applicable conditions of this Lease. Asbestos and
32 ACM which during the period of this Lease becomes accessible, damaged, or
33 deteriorated through the passage of time, as the result of a natural disaster or as a
34 consequence of Lessee's activities under this Lease including but not limited to any
35 emergency, will be abated by Lessee. Lessee may choose the most economical means of
36 abatement available. Notwithstanding Article 13.12.1 above, in an emergency, Lessee
37 will notify Government as soon as practicable of its emergency asbestos or ACM
38 responses.

39
40 13.14.3 Lessee shall be responsible for monitoring the condition of existing
41 LBP on Leased Premises for deterioration or damage and accomplishing repairs or
42 abatement pursuant to the applicable conditions of this Lease. LBP which during the
43 period of this Lease becomes damaged or deteriorated through the passage of time, as the
44 result of a natural disaster or as a consequence of Lessee's activities under this Lease
45 including but not limited to any emergency, will be abated by Lessee. Lessee may
46 choose the most economical means of abatement available. Notwithstanding Article

1 13.12.1 above, in an emergency, Lessee will notify Government as soon as practicable of
2 its emergency LBP responses.
3

4 13.14 Lessee shall indemnify and hold harmless Government from any costs, expenses,
5 liabilities, fines or penalties resulting from discharges, emissions, spills, storage or disposal
6 caused or created by Lessee's occupancy, use or operations, or any other action by Lessee or any
7 sublessee giving rise to Government liability, civil or criminal, or any other action by Lessee or
8 any sublessee giving rise or responsibility under federal, state or local environmental laws.
9 Lessee's obligations hereunder shall apply whenever Government incurs costs or liabilities for
10 Lessee's activities or activities of any sublessee as provided hereunder. This provision shall not
11 apply to the extent that claims, demands, actions, proceedings, losses, liens, costs and judgments
12 (including fines and penalties) are caused or created by concurrent active or sole negligence of the
13 Government, its officers, agents, employees, or contractors. This provision shall survive the
14 expiration or termination of the Lease.
15

16 13.15 Storage, treatment or disposal of toxic or hazardous materials on Leased Premises
17 is prohibited except as authorized by Government in accordance with 10 U.S.C. § 2692.
18

19 13.16 The responsibility of Government to indemnify and hold harmless the Lessee and
20 any sublessees against toxic torts and other environmental claims shall be in accordance with
21 Public Law 102-484, Section 330, as amended.
22

23 13.17 Lessee and sublessees shall not use or access groundwater, and shall not disturb
24 or cause to be disturbed monitoring wells and equipment described in Exhibit D without prior
25 approval pursuant to Article 13.11.
26

27 13.18 Asbestos Containing Material: Access to and occupancy of Buildings 16, 47 and
28 47T is prohibited except for short-term tours and emergency maintenance with prior approval of
29 the Navy until such time as the Lessee or its sublessee conducts necessary surveys and/or
30 abatement as set forth for ACM in the FOSL.
31

32 13.19 Indoor Air Quality 33

34 13.19.1 Existing Buildings and Structures: Access to and occupancy of
35 Buildings 16, and 47, is prohibited until such time as the Lessee or its sublessees: a)
36 conducts air monitoring within the building following all federal, state and local
37 regulatory requirements to determine the suitability of air quality relative to the proposed
38 use of the particular building, b) submits an indoor air report to the Government, DTSC,
39 EPA, and RWQCB for review, and c) obtains the concurrence of the Government, DTSC,
40 EPA, and RWQCB that restrictions for indoor air quality are no longer necessary for the
41 building and a Lease Restriction Revision Form (Exhibit E) is completed. Lessee or its
42 sublessees is permitted to demolish and remove existing buildings that may be affected
43 by impairments to air quality, notwithstanding any other restriction on use or occupancy
44 of such buildings and structures. Such existing buildings and structures are not
45 considered a component of any response or remedial action under any environmental law
46 or regulation.

1
2 13.19.2 New Buildings and Structures: Lessee or its sublessees may construct
3 new buildings or structures in areas affected by groundwater plumes and soil
4 contamination as described in the FOSL, in IRP-13S, subject to prior approval under
5 Article 8.1 of this Lease. Access to and occupancy of such new buildings and structures
6 constructed after the effective date of this lease is prohibited until such time as the Lessee
7 or its sublessees: a) conduct air monitoring within the building following all federal, state
8 and local regulatory requirements to determine the suitability of air quality relative to the
9 proposed use of the particular building, b) submits an indoor air report to the
10 Government, DTSC, EPA, and RWQCB for review, c) obtains the concurrence of the
11 Government, DTSC, EPA, and RWQCB that no restrictions on access to and occupancy
12 of the particular building are necessary. Such construction shall not be considered a
13 component of any response or remedial action under any environmental law or regulation
14 within the context of this Lease.
15

16 13.20 Lead Based Paint in Buildings and Structures Built Prior to 1978: Buildings 16,
17 17, and 47 shall not be used for residential use or child-occupied facilities until such time as the
18 necessary LBP surveys and abatement have been conducted by Lessee or its sublessees in
19 accordance with all local, state, and federal requirements. Residential or child-occupied use of
20 these buildings/structures must be approved prior to occupancy by Government, DTSC, EPA,
21 and RWQCB. In the event of demolition, the Lessee or its sublessees shall be responsible for
22 ensuring that any demolition of buildings/structures is in accordance with applicable local, state,
23 and federal regulatory requirements. In the event demolition occurs, the Lessee or its sublessees
24 shall be responsible for conducting post-demolition soil sampling and any necessary abatement
25 of soil lead hazards related to the demolition prior to occupancy of any newly constructed
26 buildings at the above listed building/structure locations.
27

28 **14. TERMINATION:**

29

30 14.1 Government shall have the right to terminate this Lease, in whole or in part,
31 without liability, upon thirty (30) calendar days notice in the event of:
32

33 14.1.1 a national emergency as declared by the President or the Congress of the
34 United States; or
35

36 14.1.2 a breach by Lessee of any terms and conditions hereof. In the event of a
37 breach involving the performance of any obligation, Lessee shall be afforded sixty (60)
38 calendar days from the receipt of Government's notice of intent to terminate to complete
39 the performance of the obligation or otherwise cure the subject breach and avoid
40 termination of this Lease, unless Government determines that a shorter period is required
41 for safety, environmental, operations or security purposes. In the event that Government
42 shall elect to terminate this Lease on account of the breach by Lessee of any of the terms
43 and conditions, Government shall be entitled to recover and Lessee shall pay to
44 Government:
45

1 14.1.2.1 The costs incurred in reacquiring possession of Leased
2 Premises.

3
4 14.1.2.2 The costs incurred in performing any obligation on the
5 part of Lessee to be performed hereunder.

6
7 14.1.2.3 An amount equal to the aggregate of any maintenance
8 obligations and charges assumed hereunder and not paid or satisfied, which
9 amounts shall be due and payable at the time when such obligations and charges
10 would have accrued or become due and payable under this Lease.

11
12 14.1.3 Failure of Lessee to accept title of a conveyed of a portion of the Leased
13 Premises within ten (10) calendar days following the tender of a Quitclaim Deed by the
14 Government.

15
16 14.2 Lessee shall have the right to terminate this Lease upon thirty (30) calendar days
17 written notice to Government in the event of a breach by Government of any of the terms and
18 conditions hereof. In the event of a breach involving the performance of any obligation by the
19 Government, the Government shall be afforded sixty (60) calendar days from the receipt of
20 Lessee's notice of intent to terminate to complete performance of the obligation or otherwise
21 cure the subject breach and avoid termination of this Lease. Lessee shall also have the right to
22 terminate this Lease in the event of damage to or destruction of all of the improvements on
23 Leased Premises or such a substantial portion thereof as to render Leased Premises incapable of
24 use for the purposes for which it is Leased hereunder, provided:

25
26 14.2.1 Government either has not authorized or directed the repair, rebuilding or
27 replacement of the improvements or has made no provision for payment for such repair,
28 rebuilding or replacement by application of insurance proceeds or otherwise; and

29
30 14.2.2 That such damage or destruction was not occasioned by the fault or
31 negligence of Lessee or any of its officers, agents, servants, employees, sublessees,
32 licensees or invitees, or by any failure or refusal on the part of Lessee to fully perform its
33 obligations under this Lease.

34
35 14.3 Lessee shall have the right to terminate this lease by written notice to
36 Government, given at any time:

37
38 14.3.1 If Government requires Lessee to vacate all or a substantial portion of
39 Leased Premises pursuant to Article 15 of this Lease for a period in excess of five (5)
40 calendar days. Lessee may terminate this Lease by written notice to Government given at
41 any time while Lessee shall continue to be denied use of all or a substantial portion of
42 Leased Premises. Lessee shall thereafter surrender possession of Leased Premises within
43 fifteen (15) calendar days of such notice.

44
45 14.3.2 In the event that entry by Government on Leased Premises is necessary
46 for the purposes of remedial or corrective action, and such activity substantially interferes

1 with the use or sublease of all or a substantial part of Leased Premises for a period of
2 more than five (5) consecutive calendar days. Lessee may terminate this Lease by
3 written notice to Government given at any time while Lessee shall continue to be denied
4 use of all or a substantial portion of Leased Premises. Lessee shall thereafter surrender
5 possession of Leased Premises within fifteen (15) calendar days of such notice.
6

7 14.3.3 In the event of breach by Government of the Agreement, provided, that in
8 the event of a breach involving the performance of any obligation by the Government, the
9 Government shall be afforded sixty (60) calendar days from the receipt of Lessee's notice
10 of intent to terminate to complete performance of the obligation or otherwise cure the
11 subject breach and avoid termination of this Lease.
12

13 15. ENVIRONMENTAL CONTAMINATION:

14

15 In the event environmental contamination is discovered on Leased Premises which
16 creates, in Government's determination, an imminent and substantial endangerment to human
17 health or the environment which necessitates evacuation of Leased Premises, and
18 notwithstanding any other termination rights and procedures contained in this Lease, Lessee
19 shall vacate or require any sublessee to vacate Leased Premises immediately upon notice from
20 Government of the existence of such a condition. Exercise of this right by Government shall be
21 without liability. Government's exercise of this right herein to order Leased Premises
22 immediately vacated does not alone constitute a termination of the Lease, but such right may be
23 exercised in conjunction with any other termination rights provided in this Lease or by law.
24

25 16. NON-ENVIRONMENTAL INDEMNIFICATION BY LESSEE:

26

27 Lessee shall at all times relieve, indemnify, protect, defend and hold harmless the United
28 States of America, and all of its officers, agents and employees from any and all claims and
29 demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature
30 whatsoever, including expenses incurred in defending against legal actions, for death or injury to
31 persons or damage to property and for civil fines and penalties arising or growing out of, or in
32 any manner connected with, the occupation or use of the Leased Premises by Lessee and the
33 employees, agents, servants, guests, invitees, contractors and sublessees of Lessee. These
34 include, but are not limited to, any fines, claims, demands and causes of action of every nature
35 whatsoever which may be made upon, sustained or incurred by Government by reason of any
36 breach, violation, omission or non-performance of any term, covenant or condition hereof on the
37 part of Lessee or the employees, agents, servants, guests, invitees and sublessees of Lessee.
38 However, this indemnity shall not extend to damages due to the sole fault or negligence of
39 Government or its contractors. This covenant shall survive the termination of this Lease for any
40 injury or damage occurring after the commencement of term of the Lease.
41

42 17. INSURANCE:

43

44 17.1 Except to the extent of the Government's obligation to indemnify pursuant to
45 Public Law 102-484, Section 330, as amended, the Lessee shall bear all risk of loss or damage to
46 Leased Premises and for claims arising from any incident with respect to bodily injuries or death

1 resulting therefrom, property damage or both, suffered or alleged to have been suffered by any
2 person or persons resulting from the operations of Lessee, sublessees, contractors and invitees
3 under the terms of this Lease.
4

5 17.2 At the commencement of this Lease, Lessee shall obtain, from a reputable
6 insurance company or companies, commercial general liability insurance. The insurance shall
7 provide an amount not less than the minimum combined single limit of \$1,000,000 for any
8 number of persons or claims arising from any one incident with respect to bodily injuries or
9 death resulting therefrom, property damage or both, suffered or alleged to have been suffered by
10 any person or persons resulting from the operations of Lessee, sublessees, contractors and
11 invitees under the terms of this Lease. Lessee shall require its insurance company to furnish
12 Government a copy of the policy or policies, or if acceptable to Government, certificates of
13 insurance evidencing the purchase of such insurance. The minimum amount of liability
14 insurance coverage is subject to revision by Government upon renewal or modification of this
15 Lease.
16

17 17.3 As to those structures and improvements on Leased Premises constructed by or
18 owned by Government, Lessee shall procure and maintain at Lessee's cost a standard fire and
19 extended coverage insurance policy or policies on Leased Premises in an amount not less than
20 \$1, 000, 000. Lessee shall procure such insurance from a reputable company or companies. The
21 insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or
22 policies, at the election of Government, shall be payable to Lessee to be used solely for the
23 demolition of damaged or destroyed structures and improvements, removal of debris and
24 clearance of the Leased Premises or for repair, restoration, or replacement of the property
25 damaged or destroyed. Any balance of the proceeds not required for such purposes shall be paid
26 to Government. If Government does not elect, by notice in writing to the insurer within thirty
27 (30) calendar days after the damage or destruction occurs, to have the proceeds paid to Lessee
28 for the purposes herein above set forth, then such proceeds shall be paid to Government,
29 provided however that the insurer, after payment of any proceeds to Lessee in accordance with
30 the provision of the policy or policies, shall have no obligation or liability with respect to the use
31 or disposition of the proceeds by Lessee. Nothing herein contained shall be construed as an
32 obligation upon Government to repair, restore or replace Leased Premises or any part thereof.
33

34 17.4 If and to the extent required by law, Lessee shall provide worker's compensation
35 or similar insurance in form and amounts required by law.
36

37 17.5 During the entire period this Lease shall be in effect, Lessee shall require its
38 contractors or sublessees or any contractor performing work at Lessee's or sublessee's request
39 on Leased Premises to carry and maintain the insurance required below:
40

41 17.5.1 Commercial general liability insurance, in the amount of \$1,000,000.
42

43 17.5.2 Worker's compensation or similar insurance in form and amounts required
44 by law.
45

1 17.6 All insurance which this Lease requires Lessee or sublessee to carry and maintain
2 or cause to be carried or maintained shall be in such form, for such periods of time, and with
3 such insurers as Government may reasonably require or approve. All policies or certificates
4 issued by the respective insurers for public liability and property insurance will name
5 Government as an additional insured, provide that any losses shall be payable notwithstanding
6 any act or failure to act or negligence of Lessee or Government or any other person, provide that
7 no cancellation, reduction in amount or material change in coverage thereof shall be effective
8 until at least thirty (30) calendar days after receipt by Government of written notice thereof;
9 provide that the insurer shall have no right of subrogation against Government; and be
10 reasonably satisfactory to Government in all other respects. In no circumstances will Lessee be
11 entitled to assign to any third party, rights of action, which Lessee may have against
12 Government.
13

14 17.7 Lessee and sublessees shall deliver or cause to be delivered promptly to
15 Government a certificate of insurance evidencing the insurance required by this Lease and shall
16 also deliver prior to expiration of any such policy, a certificate of insurance evidencing each
17 renewal policy covering the same risks.
18
19

20 **18. LABOR PROVISION:**
21

22 During the term of this Lease, Lessee agrees as follows:
23

24 18.1 Lessee will not discriminate against any employee or applicant for employment
25 because of race, color, religion, sex or national origin. Lessee shall take affirmative action to
26 ensure that applicants are employed, and that employees are treated during employment, without
27 regard to their race, color, religion, sex or national origin. Such action shall include, but not be
28 limited to the following: employment, upgrading, demotion or transfer, recruitment or
29 recruitment advertising, layoff or termination, rate of pay or other forms of compensation and
30 selection for training, including apprenticeship. Lessee agrees to post in conspicuous places,
31 available to employees and applicants for employment, notices to be provided by Government
32 setting forth the provisions of this nondiscrimination clause.
33

34 18.1.1 Lessee shall, in all solicitations or advertisements for employees placed at
35 Leased Premises by or on behalf of Lessee, state that all qualified applicants will receive
36 consideration for employment without regard to race, color, religion, sex or national
37 origin.
38

39 18.1.2 Lessee shall send to each labor union or representative of workers with
40 which it has a collective bargaining agreement or other contract or understanding a notice
41 to be provided by Government, advising the labor union or worker's representative of
42 Lessee's commitments under this equal opportunity clause and shall post copies of the
43 notice in conspicuous places available to employees and applicants for employment.
44

45 18.1.3 Lessee shall comply with all provisions of Executive Order 11246 of
46 September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the
rules, regulations and relevant orders of the Secretary of Labor.

1
2 18.1.4 Lessee shall furnish all information and reports required by Executive
3 order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967,
4 and of the rules, regulations and relevant orders of the Secretary of Labor or pursuant thereto,
5 and will permit access to his books, records and accounts by Government and the Secretary of
6 Labor for purposes of investigating to ascertain compliance with such rules, regulations and
7 orders.
8

9 18.1.5 In the event of Lessee's noncompliance with the equal opportunity clause
10 of this Lease or with any of said rules, regulations or orders, this Lease may be canceled,
11 terminated or suspended in whole or in part and Lessee may be declared ineligible for further
12 Government contracts in accordance with procedures authorized in Executive Order 11246 of
13 September 24, 1965, as amended by Executive order 11375 of October 13, 1967, and such other
14 sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of
15 September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule,
16 regulation or order of the Secretary of Labor, or otherwise provided by law.
17

18 18.1.6 Lessee will include the above provisions in every sublease unless
19 exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204
20 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of
21 October 13, 1967, so that such provisions will be binding upon each sublessee. Lessee will take
22 such action with respect to any sublessee as Government may direct as a means of enforcing
23 such provisions including sanctions for noncompliance; provided, however, that in the event
24 Lessee becomes involved, or is threatened with litigation with sublessee as a result of such
25 direction by Government, Lessee may request the United States to enter into such litigation to
26 protect the interest of the United States.
27

28 18.2 This Lease, to the extent that it is a contract of a character specified in the
29 Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) and is not covered by the
30 Walsh-Healy Public Contracts Act (41 U.S.C. 35-45), is subject to the following provisions and
31 exceptions of said Contract Work Hours and Safety Standards Act and to all other provisions and
32 exceptions of said law.
33

34 18.2.1 Lessee shall not require or permit any laborer or mechanic in any
35 workweek in which he is employed on any work under this Lease to work in excess of 40
36 hours in such work week on work subject to the provisions of the Contract Work Hours
37 and Safety Standards Act unless such laborer or mechanic receives compensation at a
38 rate not less than one and one-half times his basic rate of pay for all such hours worked in
39 excess of 40 hours in such work week. The "basic rate of pay", as used in this clause,
40 shall be the amount paid per hour, exclusive of Lessee's contribution or cost for fringe
41 benefits and any cash payment made in lieu of providing fringe benefits or the basic
42 hourly rate contained in the wage determination, whichever is greater.
43

44 18.2.2 In the event of any violation of the provision of Article 18.2.1, Lessee
45 shall be liable to any affected employee for any amounts due, and to the United States for
46 liquidated damages. Such liquidated damages shall be computed with respect to each

1 individual laborer or mechanic employed in violation of the provisions of Article 18.2.1
2 in the sum of ten \$10.00 for each calendar day on which such employee was required or
3 permitted to be employed on such work in excess of the standard work week of 40 hours
4 without payment of the overtime wages required by Article 18.2.1.
5

6 18.3 In connection with the performance of work required by this Lease, Lessee agrees
7 not to employ any person undergoing a sentence of imprisonment unless the utilization of
8 prisoners is in conformity with the provisions of Executive Order 11755.
9

10 **19. SUBMISSION OF NOTICES:**
11

12 No notice, order, direction, determination, requirement, consent or approval under this
13 Lease shall be of any effect unless in writing. All correspondence, notices and claims
14 concerning this Lease shall be directed to the addresses set out below or to such addresses as
15 may from time to time be given by the parties. Such correspondence, notices and claims may be
16 delivered by hand, express delivery, overnight courier or by prepaid registered or certified mail,
17 return receipt requested.
18

19 If to Government:
20

21 Real Estate Contacting Officer
22 Southwest Division, Naval Facilities Engineering Command
23 1220 Pacific Highway
24 San Diego, CA 92132-5190
25

26 If to Lessee:
27 [Successful Bidder]
28

29 The individuals so designated above shall be the representatives of the parties and the
30 points of contact during the period of this Lease, unless otherwise indicated by written notice of
31 an individual party to the Lease to each party to the Lease.
32

33 **20. AUDIT:**
34

35 This Lease shall be subject to audit by any and all cognizant Government agencies.
36 Lessee shall make available to such agencies for use in connection with such audits all records
37 that it maintains with respect to its obligation under this Lease and copies of all reports required
38 to be filed hereunder. In no event shall the provisions of this Article be construed to authorize or
39 require the disclosure of documents protected from disclosure by the attorney-client privilege, or
40 any other document, the confidentiality of which is protected by state or federal law.
41

42 **21. AGREEMENT:**
43

44 This Lease shall not be modified unless in writing and signed by both parties. No oral
45 statements or representation made by, for or on behalf of either party shall be a part of this
46 Lease. Should a conflict arise between the provisions of this Lease and any exhibit hereto, or

1 any other agreement between Government and Lessee, the provisions of this Lease shall take
2 precedence. Government and Lessee agree to review the terms of this Lease should either party
3 request an amendment to the Lease.
4

5 **22. FAILURE TO INSIST ON COMPLIANCE:**
6

7 The failure of Government to insist, in any one or more instances, upon performance of
8 any of the terms, covenants or conditions of this Lease shall not be construed as a waiver or
9 relinquishment of Government's right to the future performance of any such terms, covenants or
10 conditions and Lessee's obligations in respect to such future performance shall continue in full
11 force and effect.
12

13 **23. DISPUTES:**
14

15 23.1 This Lease is subject to the Contract Disputes Act of 1978, as amended (41
16 U.S.C. 601-613) (the Act).
17

18 23.2 Except as provided in the Act, all disputes arising under or relating to this Lease
19 shall be resolved under this clause.
20

21 23.3 "Claim", as used in this clause, means a written demand or written assertion by
22 Lessee or Government seeking, as a matter of right, the payment of money in a sum certain, the
23 adjustment or interpretation of Lease terms, or other relief arising under or relating to this Lease.
24 A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be
25 resolved under a Lease clause that provides for the relief sought by the claimant. However, a
26 written demand or written assertion by Lessee seeking the payment of money exceeding
27 \$100,000 is not a claim under the Act until certified as required by Article 23.4. below. A
28 voucher, invoice or other routine request for payment that is not in dispute when submitted, is
29 not a claim under the Act. The submission may be converted to a claim under the Act, by
30 complying with the submission and certification requirements of this clause, if it is disputed
31 either as to liability or amount or is not acted upon in a reasonable time. "Command" used in
32 this clause means the Southwest Division, Naval Facilities Engineering Command.
33

34 23.4 A claim by Lessee shall be made in writing and submitted within six (6) years
35 after accrual of the claim, to the Command, for a written decision. A claim by Government
36 against Lessee shall be subject to a written decision by the Command.
37

38 23.4.1 Lessee shall provide the certification specified in Article 23.4.3 of this
39 clause when submitting any claim:
40

41 23.4.1.1 Exceeding \$100,000; or
42

43 23.4.1.2 Regardless of the amount claimed, when using:
44

45 23.4.1.2.1 Arbitration conducted pursuant to 5 U.S.C. 575-580; or
46

1 23.4.1.2.2 Any other alternative means of dispute resolution (ADR)
2 technique that the agency elects to use in accordance with the
3 Administrative Dispute Resolution Act (ADRA).
4

5 23.4.2 The certification requirement does not apply to issues in controversy that
6 have not been submitted as all or part of a claim.
7

8 23.4.3 The certification shall state as follows: "I certify that the claim is made in
9 good faith; that the supporting data are accurate and complete to the best of my
10 knowledge and belief; that the amount requested accurately reflects the contract
11 adjustment for which Lessee believes Government is liable; and that I am duly
12 authorized to certify the claim on behalf of Lessee."
13

14 23.4.4 The certification may be executed by any person duly authorized to bind
15 Lessee with respect to the claim.
16

17 23.5 For Lessee claims of \$100,000 or less, the Command, must, if requested in
18 writing by Lessee, render a decision within 60 calendar days of the request. For Lessee-certified
19 claims over \$100,000, the Command, must, within 60 calendar days, decide the claim or notify
20 Lessee of the date by which the decision will be made.

21 23.6 The Command's decision shall be final unless Lessee appeals or files a suit as
22 provided in the Act.
23

24 23.7 At the time a claim by the Lessee is submitted to Command or a claim by
25 Government is presented to Lessee, the parties, by mutual consent, may agree to use ADR.
26 When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR
27 technique that the agency elects to employ in accordance with the ADRA, any claim, regardless
28 of amount, shall be accompanied by the certification described in Article 23.4.3 of this clause,
29 and executed in accordance with Article 23.4.4 of this clause.
30

31 23.8 Government shall pay interest on the amount found due and unpaid by
32 Government from (1) the date the Command receives the claim (properly certified if required),
33 or (2) the date payment otherwise would be due, if that date is later, until the date of payment.
34 With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be
35 paid from the date that the Command initially receives the claim. Simple interest on claims shall
36 be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is
37 applicable to the period during which the Command receives the claim and then at the rate
38 applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of
39 the claim.
40

41 23.9 Lessee shall proceed diligently with the performance of Lease, pending final
42 resolution of any request for relief, claim, appeal or action arising under Lease, and comply with
43 any decision of the Command.
44

45 **24. COVENANT AGAINST CONTINGENT FEES:**
46

1 Lessee warrants that no person or agency has been employed or retained to solicit or
2 secure this Lease upon an agreement or understanding for a commission, percentage, brokerage
3 or contingent fee, excepting bona fide employees or bona fide established commercial agencies
4 maintained by Lessee for the purpose of securing business. For breach or violation of this
5 warranty, Government shall have the right to annul this Lease without liability or in its
6 discretion, to require Lessee to pay, in addition to the consideration, the full amount of such
7 commission, percentage, brokerage or contingent fee.
8

9 **25. LIENS:**

10
11 Lessee shall promptly discharge or cause to be discharged any valid lien, right in rem,
12 claim or demand of any kind, except one in favor of Government, which at any time may arise or
13 exist with respect to the Leased Premises or materials or equipment furnished therefor, or any
14 part thereof, and if the same shall not be promptly discharged by Lessee, or should Lessee or
15 sublessee be declared bankrupt or make an assignment on behalf of creditors, or should the
16 Leasehold estate be taken by execution, Government reserves the right to take immediate
17 possession without any liability to Lessee or any sublessee. Lessee and any sublessee shall be
18 responsible for any costs incurred by Government in securing clear title to its property.
19

20 **26. TAXES:**

21
22 Lessee shall pay to the proper authority, when and as the same become due and payable,
23 all taxes, assessments and similar charges which, at any time during the term of this Lease, may
24 be imposed upon Lessee with respect to Leased Premises. Title 10 United States Code, Section
25 2667(e) contains the consent of Congress to the taxation of Lessee's interest in Leased Premises,
26 whether or not Leased Premises are in an area of exclusive federal jurisdiction. Should Congress
27 consent to taxation of Government's interest in the property, this Lease will be renegotiated.
28

29 **27. EASEMENTS AND RIGHTS OF WAY:**

30
31 27.1 This Lease is subject to all outstanding easements and rights of way of any type
32 over, across, in and upon Leased Premises or any portion thereof and to the right of Government
33 to grant such additional easements and rights of way over, across, in or upon Leased Premises,
34 subject to the terms and conditions of the Agreement with prior written consent of Lessee, and as
35 the Government shall determine to be in the public interest; provided that any such additional
36 easement or right of way shall be conditioned on the assumption by the grantee thereof of
37 liability to Lessee for such damages as Lessee shall suffer for property destroyed or property
38 rendered unusable on account of the grantee's exercise of its rights thereunder. Such easements
39 and rights of way shall include but not be limited to those for water, gas, electricity, telephone,
40 sewer, pipelines, conduits and for any type of facility, including but not limited to those for
41 communications, heating, cooling and power. There is hereby reserved to the holders of such
42 easements and rights-of-way as are presently outstanding or which may hereafter be granted, to
43 any workers officially engage in the construction, installation, maintenance, operation, repair or
44 replacement of facilities located thereon, and to any federal, state or local official engaged in the
45 official inspection thereof, such reasonable rights of ingress and egress over Leased Premises as
46 shall be necessary for the performance of their duties with regard to such facilities.

1
2 27.2 The Lessee shall not interfere with or otherwise disturb Government owned roads,
3 structures, facilities, pipe-lines or conduits located on the Leased Premises and necessary for or
4 related to ongoing Government remediation activities without the prior written consent of the
5 Government. To the extent relocation of such items is required by Lessee, the Lessee may
6 relocate such items at its own cost and expense in a manner satisfactory to the Government.
7

8 28. **ADMINISTRATION:**
9

10 Except as otherwise provided for under this Lease, Government shall, under the direction
11 of the Naval Facilities Engineering Command, Southwest Division, have complete charge of the
12 administration of this Lease, and shall exercise full supervision and general direction thereof
13 insofar as the interests of Government are affected.
14

15 29. **SURRENDER:**
16

17 Upon the expiration of this Lease, unless such expiration occurs by reason of
18 conveyance, or its prior termination, Lessee shall quietly and peacefully remove itself and its
19 property from Leased Premises and surrender the possession thereof to Government.
20 Government may, in its discretion, declare any property that has not been removed from Leased
21 Premises upon expiration or termination provided for above, as abandoned property upon an
22 additional 30 calendar days notice.
23

24 30. **PAYMENT:**
25

26 All payments to Government required under this Lease shall be made by check payable
27 to the Treasurer of the United States and delivered to Commander, Southwest Division, Naval
28 Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132-5179.
29

30 31. **INTEREST:**
31

32 32.1 Notwithstanding any other provision of this Lease, unless paid within thirty (30)
33 calendar days, all amounts that become payable by Lessee to Government under this Lease (net
34 any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due.
35 The rate of interest will be the Current Value of Funds rate published by the Secretary of
36 Treasury pursuant to 31 U.S.C. 3717 (Debt Collection Act of 1982).
37

38 32.1.1 Amounts shall be due upon the earliest of:
39

40 32.1.1.1 the date fixed pursuant to this Lease,
41

42 32.1.1.2 the date of the first written demand for payment, consistent
43 with this Lease and the requirement that Government provide reasonable documentation
44 for all billings and assessments and other Government demands for payment, including
45 demand consequent upon default termination,
46

1 32.1.1.3 the date of transmittal by Government to Lessee of a proposed
2 supplemental agreement to confirm completed negotiations fixing the amount,
3

4 32.1.1.4 if this Lease provides for revision of prices, the date of written
5 notice to Lessee stating the amount of refund payable in connection with a pricing
6 proposal or in connection with a negotiated pricing agreement not confirmed by Lease
7 supplement.
8

9 **32. AVAILABILITY OF FUNDS:**

10
11 Government's obligations under this Lease are subject to the availability of funds
12 appropriated for such purposes. Nothing in this Lease shall be interpreted to require obligations
13 or payments by Government which is in violation of the Anti-Deficiency Act (31 U.S.C 1341).
14

15 **33. APPLICABLE RULES AND REGULATIONS:**

16
17 Lessee shall comply with all federal, state and local laws, regulations and standards that
18 are applicable or may become applicable to Lessee's or any sublessee activities on Leased
19 Premises. These include, but are not limited to, laws and regulations on the environment,
20 construction of facilities, health, safety, food service, water supply, sanitation, use of pesticides,
21 and licenses or permits to do business. Lessee and any sublessee are responsible for obtaining
22 and paying for permits required for its operations under the Lease.
23

24 **34. QUIET POSSESSION:**

25
26 Government covenants and agrees that Lessee, upon paying any charges hereunder
27 provided for and observing and keeping all covenants, agreements, and conditions of this Lease
28 on its part to be observed and kept, shall quietly have and enjoy Leased Premises during the term
29 of this Lease without hindrance or molestation by anyone claiming by or through Government,
30 subject, however, to the exceptions, reservations and conditions of this Lease.
31

32 **35. GOVERNMENT APPROVAL:**

33
34 Whenever Government approval or consent is required by this Lease, such approval or
35 consent shall not be unreasonably withheld or delayed.
36
37
38

39 **[Signature Page Follows]**
40

1 **IN WITNESS WHEREOF**, the parties hereto have duly executed this Lease as of the
2 date first above written.
3

4 **THE UNITED STATES OF AMERICA,**
5 Acting by and through the Department of the Navy
6

7
8
9 By: _____
10

11
12
13 Dated: _____
14

15
16
17
18 Successful Bidder

19
20 By: _____
21

22
23 Dated _____

LEGEND

- ROAD
- BUILDING OR STRUCTURE
- PARCEL BOUNDARY
- 27 PARCEL NUMBER
- DESCRIPTION OF PROPERTY
- GOVERNMENT PARCELS
- OTHER MCAS PROPERTIES



1200 0 1200 Feet

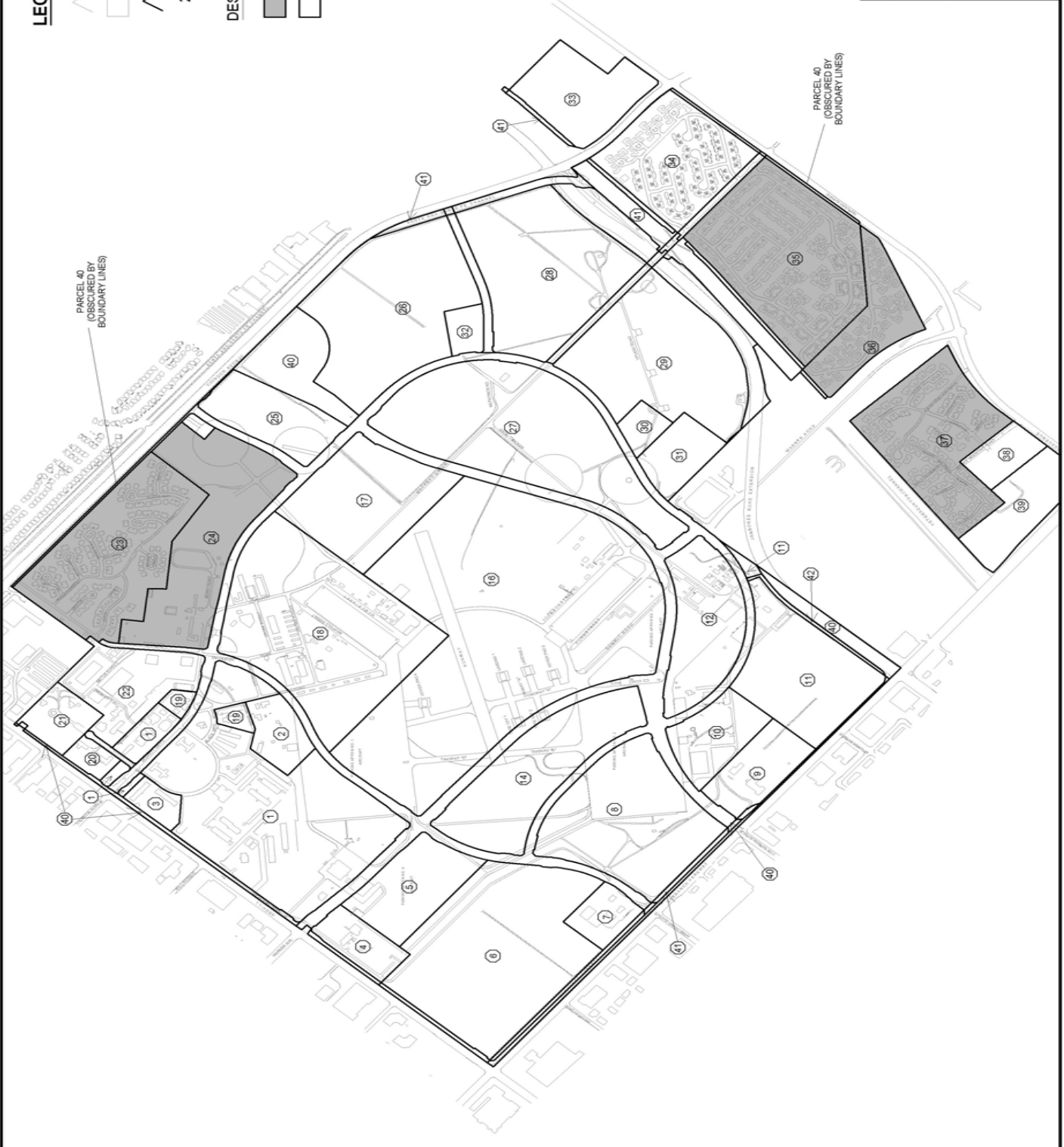
LIFOC Exhibit A

Former MCAS Tustin, California



Date: 6/20/02
File No.: 187L9125
Job No.: 22214-187
Rev No.: B

Bechtel National, Inc.
CLEAN II Program



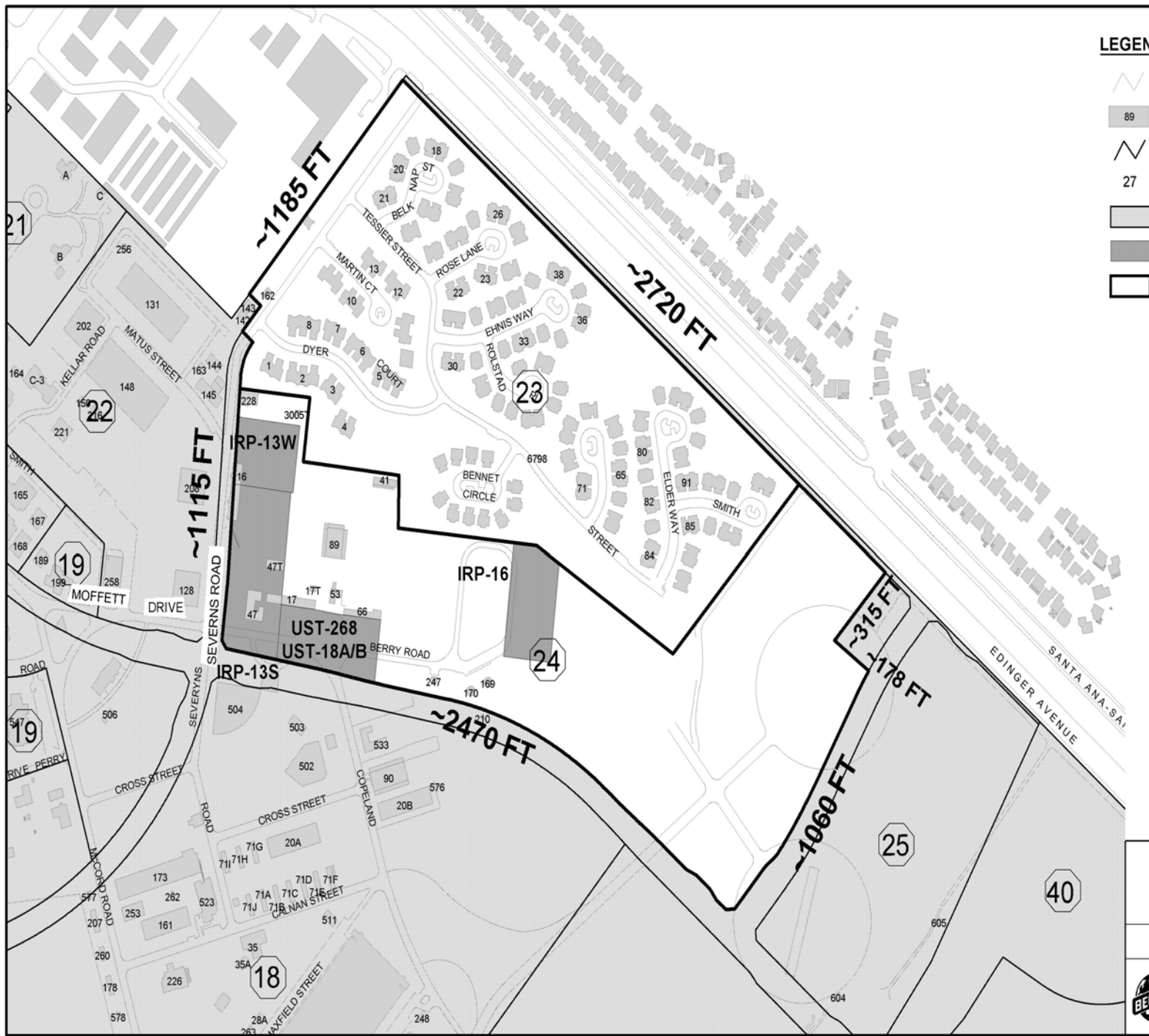


Exhibit C

WORK EXEMPT FROM GOVERNMENT CONSENT

(Note: All work must be in accordance with paragraph 13 of the LIFOC)

1. Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety and City of Tustin Building Code requirements in accordance with paragraph 12 of this lease.
2. Addition of improvements to existing structures to comply with the Americans with Disabilities Act.
3. Ongoing maintenance of landscaping, native vegetation and irrigation systems to include planting and irrigation in areas previously disturbed by these activities and removal of vegetation and dead or unsalvageable trees or other vegetation.
4. In-kind replacement of building or site features.
5. Replacement or reconstruction of existing above-ground utility systems and/or facilities involving negligible or no expansion of capacity (where no utility pole installations are involved).
6. Placement of seasonal or temporary structures and use items such as mobile food units, construction or temporary office trailers, and/or portable restrooms.
7. Interior building improvements and alterations such as wall and ceiling finishes, painting, repair and/or replacement of flooring, lighting, plumbing, and HVAC fixtures or systems and relocation and/or removal of non-bearing partition walls.

LEGEND

- ROAD
- BUILDING OR STRUCTURE
- PARCEL BOUNDARY
- PARCEL NUMBER
- NON-SALE PARCEL
- LEASED PREMISES
- PARCEL FOR PUBLIC SALE
- MONITORING WELL



LIFOC Exhibit D Monitoring Wells

Former MCAS Tustin, California

Date: 7/3/02
File No.: 187L9176
Job No.: 22214-187
Rev No.: B

Bechtel National, Inc.
CLEAN II Program

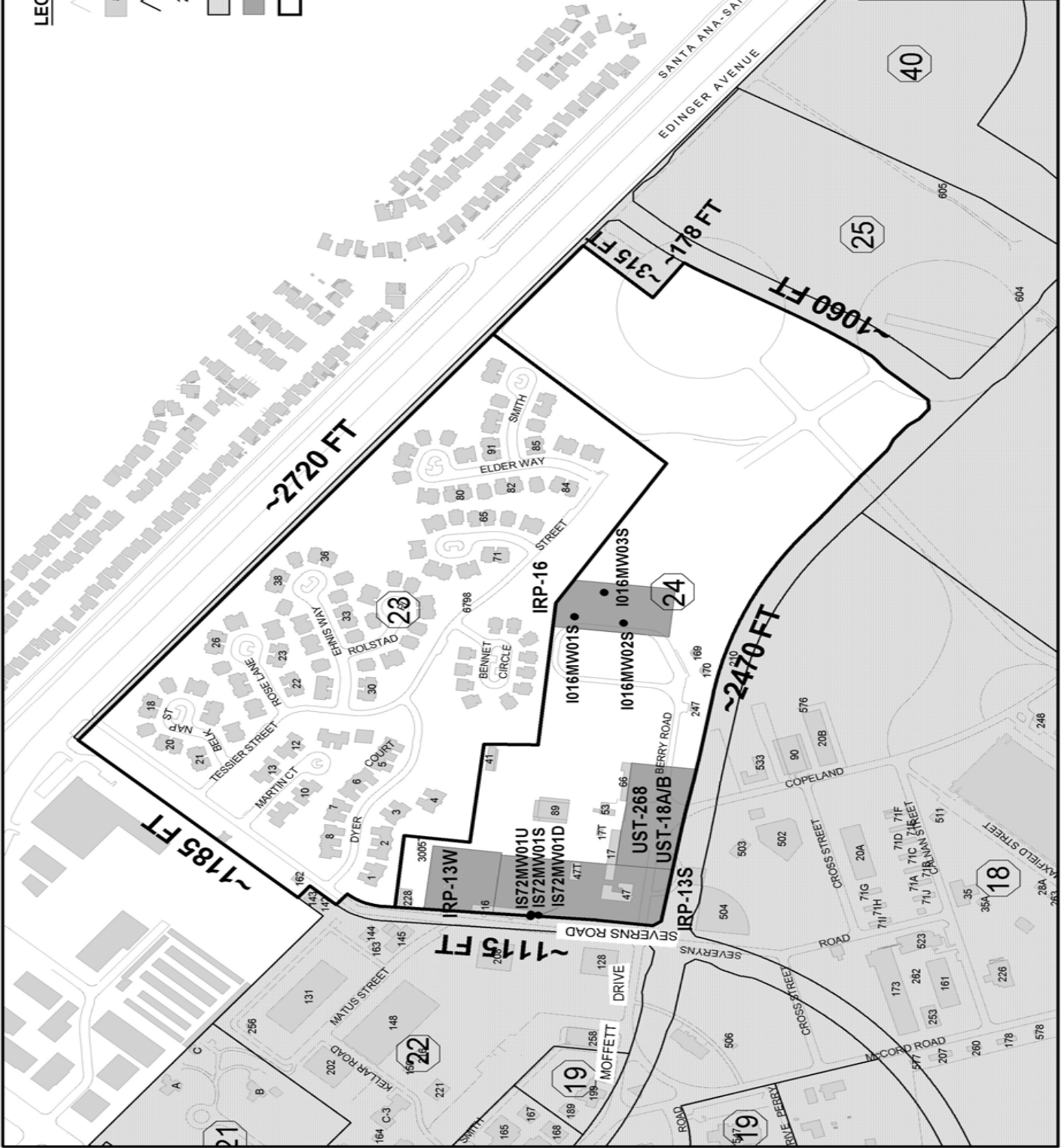


Exhibit E

Lease Restriction Revision Form

Lease Restriction Revision (Navy Endorsement/Regulatory Review) Form

Upon completion, this form shall be attached to the original Finding of Suitability to Lease (FOSL) under revision.

SUBJECT: Parcel Identity _____

FOSL Revision # _____; Revision Date: _____

NAVY ENDORSEMENT:

Section 9: "Notifications and Restrictions Summary" of the MCAS Tustin FOSL for above subject Parcel Identity is hereby revised as follows:

| Check Box | Type of Revision | Lease Restriction/Condition Number (s) (Refer to Table 9 of the FOSL) |
|-----------|-----------------------------|--|
| | REMOVE | |
| | ADD Text enclosed Yes No | |
| | MODIFY(text enclosed) | |

As a result of this revision, the following area(s) and/or facility(ties) is (are) **now suitable for occupancy/access**:

Area(s) and/or facility(ties) which is (are) **now not suitable for occupancy/access** based on addition/modification of the restriction(s) is (are) as follow(s):

The following enclosure(s) provide(s) the environmental documentation for each of the lease restriction/condition revisions identified above:

BRAC ENVIRONMENTAL COORDINATOR

DATE

EPA CONSULTATIONS/REVIEW:

☐ The environmental documentation for the revision to the lease restriction/conditions as identified in the above Navy Endorsement has been reviewed by this office. Based upon the information provided, this office is satisfied that the assessment is complete and has no comments regarding the Navy endorsement.

☐ This office does not concur with the Navy endorsement. Review comments and the rationale for the lack of concurrence are provided by Attachment (1)

ENVIRONMENTAL PROTECTION AGENCY

DATE

DTSC CONSULTATIONS/REVIEW:

☐ The environmental documentation for the revision to the lease restriction/conditions as identified in the above Navy Endorsement has been reviewed by this office. Based upon the information provided, this office is satisfied that the assessment is complete and has no comments regarding the Navy endorsement.

☐ This office does not concur with the Navy endorsement. Review comments and the rationale for the lack of concurrence are provided by Attachment (1)

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

DATE